

Jeffrey Dweck (JD 6658)
THE LAW FIRM OF JEFFREY S. DWECK, P.C.
100 West 33rd Street, Suite 1017
New York, New York 10001
(212) 502-6150
Attorneys for Defendants

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

FAMOUS HORSE INC. d/b/a V.I.M.,

Plaintiff,

vs.

**5TH AVENUE PHOTO INC., M&B SUIT WAREHOUSE,
INC., I D-DEALZ, INC., MIKE BOUSKILA and MOSHE
BOUSKILA,**

Defendants.

Case No. 07-CV-7818 (PAULEY, J.)

**ANSWER TO COMPLAINT AND
AFFIRMATIVE DEFENSES**

Defendants, by their attorneys, The Law Firm of Jeffrey S. Dweck, P.C., for their Answer to the Complaint, and for their Affirmative Defenses, and specifically reserving all rights set forth in their pre-Answer letter requesting a pre-motion conference for their contemplated F.R.C.P. 12(b) motions, allege as follows:

1. Defendants deny any factual allegations set forth in Paragraph 1 of the Complaint and otherwise asserts that the allegations contained in Paragraph 1 of the Complaint do not constitute factual allegations warranting an answer.
2. Defendants deny any factual allegations set forth in Paragraph 2 of the Complaint and otherwise asserts that the allegations contained in Paragraph 2 of the Complaint do not constitute factual allegations warranting an answer.
3. Defendants deny any factual allegations set forth in Paragraph 3 of the Complaint and otherwise asserts that the allegations contained in Paragraph 3 of the Complaint do not constitute factual allegations warranting an answer.

4. Defendants lack knowledge or information sufficient to form a belief as to the factual allegations contained in Paragraph 4 of the Complaint.
5. Defendants lack knowledge or information sufficient to form a belief as to the factual allegations contained in Paragraph 4 of the Complaint.
6. Defendant 5th Avenue Photo Inc. admits that it is or was, at all relevant times, a New York corporation and denies all other factual allegations contained in Paragraph 6 of the Complaint. The remaining defendants deny knowledge or information sufficient to form a belief as to the allegations set forth in Paragraph 6 of the Complaint.
7. Defendant M&B Suit Warehouse, Inc. admits that it is or was, at all relevant times, a New York corporation and denies all other factual allegations contained in Paragraph 7 of the Complaint. The remaining defendants deny knowledge or information sufficient to form a belief as to the allegations set forth in Paragraph 7 of the Complaint.
8. Defendant I D-Dealz, Inc. admits that it is or was, at all relevant times, a New York corporation and denies all other factual allegations contained in Paragraph 8 of the Complaint. The remaining defendants deny knowledge or information sufficient to form a belief as to the allegations set forth in Paragraph 8 of the Complaint.
9. Defendant Moshe Bouskila admits the allegations set forth in Paragraph 9 of the Complaint. The remaining defendants deny knowledge or information sufficient to form a belief as to the allegations set forth in Paragraph 9 of the Complaint.
10. Defendant Mike Bouskila admits the allegations set forth in Paragraph 10 of the Complaint. The remaining defendants deny knowledge or information sufficient to form a belief as to the allegations set forth in Paragraph 10 of the Complaint.
11. Defendants deny the allegations set forth in Paragraph 11 of the Complaint.
12. Defendants lack knowledge or information sufficient to form a belief as to the factual allegations

contained in Paragraph 12 of the Complaint.

13. Defendants deny the allegations set forth in Paragraph 13 of the Complaint.

14. Defendants deny the allegations set forth in Paragraph 14 of the Complaint.

15. Defendants deny the allegations contained in Paragraph 15 of the Complaint.

16. Defendants deny the allegations contained in Paragraph 16 of the Complaint.

17. Defendants deny the allegations contained in Paragraph 17 of the Complaint.

18. Defendants deny knowledge or information sufficient to form a belief as to the allegations set forth in Paragraph 18 of the Complaint.

19. Defendants deny the allegations set forth in Paragraph 19 of the Complaint.

20. Defendants deny the allegations set forth in Paragraph 20 of the Complaint and additionally deny making any representation whatsoever.

21. Defendants deny the allegations set forth in Paragraph 21 of the Complaint.

22. Defendants deny the allegations set forth in Paragraph 22 of the Complaint.

23. Defendants deny the allegations set forth in Paragraph 23 of the Complaint.

24. Defendants deny the allegations set forth in Paragraph 24 of the Complaint.

25. Defendants deny the allegations set forth in Paragraph 25 of the Complaint.

26. Defendants deny the allegations set forth in Paragraph 26 of the Complaint.

27. Defendants deny the allegations set forth in Paragraph 27 of the Complaint.

28. Defendants deny the allegations set forth in Paragraph 28 of the Complaint.

29. Defendant repeats its responses set forth above.

30. Defendants deny the allegations set forth in Paragraph 30 of the Complaint.

31. Defendants deny the allegations set forth in Paragraph 31 of the Complaint.

32. Defendants deny the allegations set forth in Paragraph 32 of the Complaint.

33. Defendants deny the allegations set forth in Paragraph 33 of the Complaint.

34. Defendants deny the allegations set forth in Paragraph 34 of the Complaint.
35. Defendants deny the allegations set forth in Paragraph 35 of the Complaint.
36. Defendants deny the allegations set forth in Paragraph 36 of the Complaint.
37. Defendants deny the allegations set forth in Paragraph 37 of the Complaint.
38. Defendants deny the allegations set forth in Paragraph 38 of the Complaint.
39. Defendant repeats its responses set forth above.
40. Defendants deny the allegations set forth in Paragraph 40 of the Complaint.
41. Defendants deny the allegations set forth in Paragraph 41 of the Complaint.
42. Defendants deny the allegations set forth in Paragraph 42 of the Complaint.
43. Defendants deny the allegations set forth in Paragraph 43 of the Complaint.
44. Defendant repeats its responses set forth above.
45. Defendants deny the allegations set forth in Paragraph 45 of the Complaint.
46. Defendants deny the allegations set forth in Paragraph 46 of the Complaint.
47. Defendants deny the allegations set forth in Paragraph 47 of the Complaint.
48. Defendants deny the allegations set forth in Paragraph 48 of the Complaint.
49. Defendants deny the allegations set forth in Paragraph 49 of the Complaint.
50. Defendants deny the allegations set forth in Paragraph 50 of the Complaint.
51. Defendants deny the allegations set forth in Paragraph 51 of the Complaint.
52. Defendant repeats its responses set forth above.
53. Defendants deny the allegations set forth in Paragraph 53 of the Complaint.
54. Defendants deny the allegations set forth in Paragraph 54 of the Complaint.
55. Defendants deny the allegations set forth in Paragraph 55 of the Complaint.
56. Defendants deny the allegations set forth in Paragraph 56 of the Complaint.
57. Defendants deny the allegations set forth in Paragraph 57 of the Complaint.

58. Defendants deny the allegations set forth in Paragraph 58 of the Complaint.

59. Defendants deny the allegations set forth in Paragraph 59 of the Complaint.

AS AND FOR ITS AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

The Complaint fails to state a claim for which relief can be granted, including, without limitation, for false designation of origin, trademark infringement, breach of contract, breach of the Uniform Commercial Code, and for individual liability.

SECOND AFFIRMATIVE DEFENSE

The Plaintiff lacks standing to maintain each count contained in the Complaint and/or Plaintiff is not the real party in interest with respect to the claims made.

THIRD AFFIRMATIVE DEFENSE

The Plaintiff is not the owner or licensee of the trademark in question and thus has no standing to bring the federal claims for Unfair Designation of Origin and Trademark Infringement.

FOURTH AFFIRMATIVE DEFENSE

This court lacks subject matter jurisdiction over this dispute.

FIFTH AFFIRMATIVE DEFENSE

Plaintiff's common law and state claims are preempted by federal law.

SIXTH AFFIRMATIVE DEFENSE

Plaintiff has unclean hands.

SEVENTH AFFIRMATIVE DEFENSE

Failure to plead fraud and misrepresentation with specificity.

Dated: New York, New York
November 14, 2007

THE LAW FIRM OF JEFFREY S. DWECK, P.C.

A handwritten signature in dark ink, appearing to read 'J. Dweck', is written over a horizontal line. The signature is stylized with loops and a long horizontal stroke extending to the right.

By: Jeffrey S. Dweck, Esq. (JD 6658)

100 West 33rd Street - Suite 1017
New York, New York 10001
212-502-6150

To: FELDMAN LAW GROUP, PC
12 East 41st Street
New York, New York 10017
Attention: Kenneth S. Feldman, Esq.